

DEPARTMENT OF FINANCE AND ADMINISTRATION
Administrative Memorandums

300.29 **TITLE:** Compliance with the Arkansas Whistle-Blower Act (Act 1523 of 1999)
ISSUING OFFICE: Director's Office
DISTRIBUTION THROUGH: All DFA Employees (LEVEL)
DATE ISSUED/REVISED: 7/31/00 **REPLACES:** _____ **DATED:** _____

The policy of the Department of Finance and Administration regarding the Arkansas Whistle-Blower Act is consistent with Arkansas Code Annotated § 21-1-601 – 609.

It is the policy of the Department of Finance and Administration that an employee will be protected from discharge or retaliation because the employee reports in good faith the existence of any waste of public funds, property, or manpower or a violation or suspected violation of State law, rule, or regulation. This policy excludes federal funds, property, or manpower.

No adverse (unfavorable) action will be taken against an employee or a person authorized to act on behalf of the employee, in the following situations:

1. if an employee alleges a violation under this Act, and does so "in good faith";
2. if an employee alleges a violation under this Act, and does so "in good faith", and participates or gives information in an investigation, hearing, court proceeding, legislative or other inquiry, or in any form of administrative review; and/or
3. if an employee alleges a violation under this Act, and does so "in good faith", and has objected to or refused to carry out a directive that the employee reasonably believes violates a law, rule, or regulation adopted under the authority of the State.

An "adverse action" is defined as discharging, threatening, discriminating, or retaliating against the employee in any manner that affects the employee's employment, including compensation, job location, rights, immunities, promotions, or privileges.

"Good faith" is lacking when the employee does not have personal knowledge of the waste or violation, or when the employee knew or reasonably should have known that the report is malicious, false, or frivolous.

The report of waste or violation should be made verbally or in writing to one of the employee's superiors or to an appropriate authority, such as:

1. a state, county, or municipal government department, agency, or organization having jurisdiction over criminal law enforcement, etc;
2. a member, officer, agent, investigator, auditor, representative, or supervisory employee of the body, agency, or organization; or
3. the office of the Attorney General, Auditor of State, Arkansas Ethics Commission, Legislative Joint Audit Committee, Division of Legislative Audit, or Prosecuting Attorney's Office.

The report by the employee of such waste or violation must be made prior to any adverse action by the employer. Additionally, the report is to be made at a time and in a manner which gives the employer reasonable notice of need to correct the waste or violation.

An employee who alleges a violation of the Act and believes that the employer has acted adversely towards him because of the allegations may bring a civil action in chancery court within 180 days of the alleged violation of the Whistle-Blower Act. Should such action occur, the employee has the burden of proof in establishing that he has suffered an adverse action for an activity protected under the Whistle-Blower Act. Additionally, the employer shall have an affirmative defense if it can establish that the adverse action taken against the employee was due to employee misconduct, poor job performance, or a reduction in workforce unrelated to a report made concerning violations under this Act.